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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

VOLTAGE PICTURES, LLC,
a California limited-liability company;

Plaintiffs,

v.

DOES 1-50,

Defendants.

Civil Action No.: 6:14-cv-00812-____

*[Removed from Marion County Circuit
Court No. 14C13823]*

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT certain anonymous John Doe defendant ISP subscribers, hereby remove Case No. 14C13823 in the Circuit Court of Marion County to the United States District Court for the District of Oregon. Removal is made, pursuant to 28 U.S.C. §§ 1454 (copyright claims removable), 1338 (federal courts have original and exclusive jurisdiction over claims arising under the Copyright Act), 1331 (federal courts have original jurisdiction over federal questions), 1441 (federal question cases may be removed), 1446 (procedure for removal), and Fed. R. Civ. P. 81(c).

STATEMENT OF FACTS ENTITLING DEFENDANTS TO REMOVAL

1. The action pending in the Circuit Court for the State of Oregon in the County of Marion, titled VOLTAGE PICTURES, LLC v. DOES 1 through 50, Case No. 14C13823 was filed on April 3rd, 2014.

2. Copies of all process, pleadings and orders served on removing Defendants are attached hereto as EXHIBIT 1. To date, Plaintiff's pleadings include the Complaint, an Ex Parte Motion for Discovery Order, and a Motion to Sever DOE 29.

3. Removal is made pursuant to 28 U.S.C. §§ 1454 and 1441, on the following grounds:

a. Claims arising under the Copyright Act (17 U.S.C. § 101 et seq) are within the original and exclusive jurisdiction of the federal courts. 28 U.S.C. § 1338. In addition, federal courts have original jurisdiction over copyright claims because they arise under federal law. 28 U.S.C. § 1331.

b. The Copyright Act preempts state law claims that that vindicate “legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright,” in works “that are fixed in a tangible medium of expression and come within the subject matter of copyright.” *See* 17 U.S.C. § 301.

c. Numerous courts have held that claims ostensibly pled under state law, but which are preempted by the Copyright Act, arise under the Copyright Act, and that removal of such claims to federal court is therefore appropriate. *See, e.g., NTD Architects v. Baker*, 2012 U.S. Dist. LEXIS 89160, 16-17 (S.D. Cal. June 27, 2012); *Bierman v. Toshiba America Info. Sys. Inc.*, 473 Fed. Appx. 756, 758 (9th Cir. 2012) (unpublished concurrence); *Rosciszewski v. Williams*, 395 F.3d 283, 286-87 (6th Cir. 2005); *Briarpatch Ltd., L.P. v Pheonix Pictures, Inc.*, 373 F.3d 296, 305 (2d Cir. 2004); *Ritchie v. Williams*, 395 F.3d 283, 286-87 (6th Cir. 2005).

d. Although Plaintiff's sole claim purports to be a state law trademark claim (not a federal Lanham Act claim or a Copyright Act claim), it seeks “an injunction

against those who would, without authorization, copy, reproduce and distribute motion pictures.” Accordingly, and as the removing parties contemplate briefing in further detail in an appropriate motion, the only subject matter at issue is a copyrightable motion picture, and the only kind of rights being asserted are exclusive Copyright rights, namely the rights to copy and distribute content, so the state trademark claim here is preempted by and arises under the Copyright Act (*see* 17 U.S.C. § 301), such that removal is appropriate here, based on the authorities noted above in subsection (c).

4. Removal to the Eugene Division of the Oregon District Court is proper under 28 U.S.C. § 1441(a) because the action is currently pending in the Circuit Court of Marion County, which is geographically located within the Oregon District Court’s Eugene Division.

5. Although the Eugene Division is appropriate based on the state court where this complaint was originally filed, given that this case is related to other Voltage Pictures cases pending in the Portland Division, including, *inter alia*, *Voltage Pictures v. John Does*, 3:13-cv-00839-AA, the Court may wish to consider transfer to the Portland Division in connection with related case assignment.

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6. Removal is timely under 28 U.S.C. § 1446(b) because removal is being effected within 30-days from when the removing John Does received a copy of the initial pleading by means other than formal service. Specifically, it is being made within 30-days from when the Does received a letter from their respective ISPs, attaching court documents, regarding the pendency of a subpoena seeking to identify them that was issued under the authority of the state court in the underlying action being removed.

May 16, 2014

Date

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the document entitled:

NOTICE OF REMOVAL

was served upon the parties listed below on the date indicated,

- ☐ by handing it to the person;
- ☐ by leaving it at the leaving it at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- ☐ by mailing it to the address indicated;
- ☐ by leaving it with the court clerk;
- ☒ by electronic filing notification (PACER); or
- ☒ other: by electronic mail to crowell@kite.com

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May 16, 2014

Date

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